

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

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|--|---|--------------------------------------|
| McComb Children’s Clinic, LTD., |) | |
| |) | |
| <i>Plaintiff,</i> |) | |
| |) | |
| v. |) | Case No. 5:24-cv-00048-LG-ASH |
| |) | |
| Xavier Becerra, et al., |) | ORAL ARGUMENT REQUESTED |
| |) | |
| <i>Defendants.</i> |) | |

PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff McComb Children’s Clinic, LTD. (“MCC”) moves this Court for an order granting partial summary judgment under 5 U.S.C. § 706 and Fed. R. Civ. P. 54(b) & 56 on MCC’s First Claim (A) Not in Accordance with Law, In Excess of Statutory Jurisdiction, Authority, and Limitations, and Contrary to Right, Power, Privilege, and Immunity. Compl. [ECF 1] at 34, ¶¶ 258–67.

Specifically, this Motion seeks the following:

1. An order declaring and holding unlawful, setting aside, and vacating HHS’s rule, Nondiscrimination in Health Programs and Activities, 89 FR 37522 (May 6, 2024), to the extent it reaches discrimination on the basis of gender identity; including the rule’s provisions at 45 C.F.R. §§ 92.5, 92.6, 92.7, 92.8, 92.9, 92.10, 92.101, 92.206–211, 92.301, 92.303, 92.304, and any other provisions of the rule or any alternative theory under the rule that Defendants may adopt to claim authority to prohibit gender identity discrimination using the rule.
2. A permanent injunction against Defendants implementing, enforcing, or applying a gender-identity nondiscrimination mandate under any aspect of the rule.
3. That the injunction run against Defendants’ officials, agents, employees, and all persons in active concert or participation with them, including their

successors in office; including any actions to deny federal financial assistance or qualification for participation in federally funded programs or activities because of the failure to perform, offer, endorse, proscribe, or refer for either gender transition efforts, or by otherwise pursuing, charging, or assessing any penalties, fines, assessments, investigations, or other enforcement actions.

6. That, under Rule 54(b), this Court expressly determine that there is no just reason for delay for entry of final judgment on this claim, and that the judgment may be immediately appealable.

7. That this Court waive any security requirement and retain jurisdiction to enforce this Court's orders. If the Court grants this motion in whole or in part, MCC reserves the right to then move for an award of attorneys' fees and costs as the prevailing party. *See, e.g.*, 28 U.S.C. § 2412.

MCC seeks partial summary judgment on the ground that the rule lacks authority under Section 1557 of the Affordable Care Act, and thus it should be vacated and enjoined. MCC reserves the right to seek other forms of relief later, if necessary, on this claim and to raise MCC's other statutory and constitutional claims later, if necessary.

This motion is supported by the accompanying memorandum, Plaintiff's complaint [ECF 1], the Declaration of Michael Artigues, M.D., F.C.P. [ECF 1-2], and the Declaration of James M. Cantor, Ph.D [ECF 6-1].

Respectfully submitted this 15th day of August, 2024.

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